IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

THURSDAY, THE 6TH SEPTEMBER 2007 / 15TH BHADRA 1929

WP(C).No. 24747 of 2007(U)

PETITIONER:

B.B.SANTHOSH KUMAR,
AGED 42 YEARS, S/O P.BHASKARAN,
BHASKARA MANDHIRAM, EZHUKONE, KOLLAM.

BY ADV. SRI.SANTHEEP ANKARATH

RESPONDENTS:

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1. THE COMMERCIAL TAX OFFICER,
PUNALUR.

2. THE DEPUTY COMMISSIONER(APPEALS),
COMMERCIAL TAXES, KOLLAM.

3. THE DEPUTY TAHSILDAR(REVENUE RECOVERY),
TALUK OFFICE, PATHANAPURAM.

BY ADV. SHRI.C.K.GOVINDAN, GOVERNMENT PLEADER

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 06/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS

P1 : COPY OF THE ORDER DATED 19/02/2007 ISSUED BY THE 1ST RESPONDENT.

P2(a) : COPY OF THE NOTICE DATED 15/03/2006 ISSUED BY THE PETITIONER TO THE 1ST RESPONDENT.

P2(b) : COPY OF THE NOTICE DATED 12/07/2006 ISSUED BY THE PETITIONER TO THE 1ST RESPONDENT.

P2(c) :COPY OF THE NOTICE DATED 27/10/2006 ISSUED BY THE PETITIONER TO THE 1ST RESPONDENT.

P3 : COPY OF THE LETTER DATED 13/03/2007 SUBMITTED BY THE PETITIONER BEFORE THE 1ST RESPONDENT.

P4 : COPY OF APPEAL (NO. 1449/07) DATED 14/04/2007 SUBMITTED BY THE PETITIONER BEFORE THE 2ND RESPONDENT.

P5 : COPY OF NOTICE DATED 14/06/2007 ISSUED BY THE 3RD RESPONDENT.

// TRUE COPY //

PA TO JUDGE.

jg

C.N.RAMACHANDRAN NAIR, J.

WP(C) No. 24747 of 2007

Dated, this the 6th day of September, 2007

J U D G M E N T

Heard learned counsel for petitioner and learned Government Pleader. Even though petitioner claimed full exemption on the ground of second sale of taxable goods, the Assessing Officer declined exemption and made assessment because petitioner did not produce records / bills and other documents. Appeal filed is still pending. Learned Government Pleader on instructions submitted that petitioner has not even filed certificate of accounts in Form 50A and Form 50B in terms of Section 27A of the KGST Act. Even though appeal is filed and is pending, necessarily matter will have to be sent back to the Officer for fresh assessment based on records. However, since Form 50A and 50B certificates of accounts are not furnished, I feel some time can be granted to the petitioner to produce certificate of accounts and books of accounts including purchase bills before the Assessing Officer but on condition of payment of at least some of the amount of tax from out of the total demand, which is about Rs. 35 lakhs. In the circumstances, this writ petition is disposed of directing the petitioner to deposit an amount of rupees two lakhs within three weeks from now. If

payment is made, the Assessing Officer will give one more opportunity to the petitioner to furnish Form 50A and 50B certificates of accounts and books of accounts along with purchase bills for him to verify the same. Fresh assessment order will be issued after issuing pre-assessment notice and after giving an opportunity to the petitioner to file objection to such notice. Petitioner will approach the Officer and take notice of posting and appear with books of accounts and other documents on the posting date for the 1st respondent to complete assessment as directed above. The payment made by the petitioner will be adjusted towards the dues, if any, under the revised assessment and if no tax is payable by the petitioner, the amount paid will be refunded to the petitioner within two months from the date of completion of assessment. Revenue recovery proceedings will be kept in abeyance for three weeks from now and if rupees two lakhs is paid as above, recovery proceedings will remain stayed till fresh orders are issued as directed above. As and when fresh orders are issued, the Officer will recall the previous orders and petitioner can withdraw the appeal filed before the appellate authority.

This writ petition is disposed of as above.

(C.N.RAMACHANDRAN NAIR, JUDGE)

jg